

BRENTWOOD LAW GROUP, PLLC
Stephen Brower (No. 024908)
2520 East University Drive, Suite 103
Tempe, AZ 85281
Telephone: (602) 497-2435
sbrower@brentwoodlg.com
Attorneys for Plaintiffs
Nilesh Gajera and Sharad Gajera

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Nilesh Gajera, an individual, and Sharad
Gajera, an individual,

Plaintiffs,

v.

CL Maack, Inc. dba Ponderosa Market, an
Arizona Corporation, Cinthyan Lee Maack,
and Hardscrabble Investments, Inc.

Defendants.

Case No.:

COMPLAINT

Plaintiffs Nilesh Gajera and Sharad Gajera (the “Gajeras”) allege as follows:

PARTIES, JURISDICTION, AND VENUE

1. Nilesh Gajera resides in San Antonio, Texas.
2. Sharad Gajera resides in San Antonio, Texas.
3. Defendant CL Maack, Inc. (“CLM”) is an Arizona corporation with a principal place of business in Pine, Arizona.
4. Defendant Cinthyan Lee Maack (“Ms. Maack”) is a resident of Arizona.
5. Defendant Hardscrabble Investments, Inc. is an Arizona corporation with a principal place of business in Pine, Arizona and that owns real property in Gila County, Arizona.
6. This Complaint arises from agreements entered in Arizona, and Defendants’ acts and omissions that occurred in Arizona.

7. This Court has jurisdiction under 28 U.S.C. § 1332. The value of property involved is used to determine jurisdictional amounts in lawsuits for specific performance. *See Comprehensive Addiction Programs v. Mendoza*, 50 F. Supp. 2d 581, 583 (E.D. La. 1999) (citing *Waller v. Professional Ins. Corp.*, 296 F.2d 545 (5th Cir. 1961)); *see also Nationstar Mortg. LLC v. Knox*, 351 Fed. App'x. 844, 848 (5th Cir. 2009) ("In actions seeking declaratory or injunctive relief, it is well established that the amount in controversy is measured by the value of the object of the litigation."); *Ebensberger v. Sinclair Refining Co.*, 165 F.2d 803 (5th Cir. 1948) (holding "the amount in controversy in this case was not the damages which appellee might suffer if its suit for specific performance were denied[,] [i]t was the value of the property sought to be acquired by the suit"); *Allen v. Dovenmuehle Mortg. Inc.*, No. 3:13-CV-4710, 2014 WL 3579812, at *4 (N.D. Tex. July 21, 2014) ("When specific performance of a contract is sought, the amount in controversy for diversity purposes is the value of the contract.").

8. Venue is proper in this Court under 28 U.S.C. § 1391(b).

GENERAL ALLEGATIONS

9. The Gajeras incorporate the above paragraphs as if fully set forth herein.

10. On June 10, 2021, CLM, Ms. Maack, and the Gajeras signed a Purchase Agreement, and Bill of Sale (collectively, the "Agreement") indicating, among other things, that the Gajeras shall purchase the business known as the Ponderosa Market (the "Business") for \$500,000. The Purchase Agreement also included \$200,000 in the form of a seller-financed loan at 5% interest for 60 months. A copy of the Agreement is attached as **Exhibit A**.

11. Section 14 of the Purchase Agreement states:

In the event Seller were to default or breach by failing to perform any of the covenants contained in this Agreement[,], **then Buyer may seek specific performance** or terminate this Agreement and receive the return of the Earnest Money Deposit, as well as seek reimbursement for reasonable legal and accounting fees and other costs incidental to inspecting the business.

Id. (emphasis added)

1 12. The Agreement constitutes a valid contract in Arizona between the Gajeras,
2 CLM, and Ms. Maack.

3 13. The Agreement set a June 25, 2021 closing date. *Id.*

4 14. Ms. Maack is a Director, Shareholder, and President of Hardscrabble
5 Investments Inc. (“HII”).

6 15. On June 10, 2021, the Gajeras and HII signed a Lease Agreement (the
7 “Lease”) to lease the premises located at 6114 W. Hardscrabble Road, Building No. 2, Pine,
8 AZ 85544.

9 16. On June 12, 2021, Ms. Maack anticipatorily repudiated the Agreement and
10 Lease and caused CLM and HII renege, back out, and breach the Agreement and Lease.
11 The Gajeras responded they were open to postponing the closing date if needed but would
12 not agree to cancel the Agreement and Lease.

13 17. The Gajeras contacted Ms. Maack on June 25, 2021 to complete the sale of
14 the market, but Ms. Maack did not respond.

15 18. On June 29, 2021, the Gajeras, through counsel, sent written correspondence
16 to Ms. Maack restating that the Gajeras intended to complete the purchase of the Business
17 under the Agreement.

18 19. On July 9, 2021, Ms. Maack stated, “I reneged or backed out or breached the
19 contract on June 12th . . . I couldn’t go through with it.”

20 20. On July 12, 2021, Ms. Maack sent an email to the Gajeras’ counsel stating: “I
21 will not sell them my market at any price now! They need to let it go.”

22 21. On July 19, 2021, Ms. Maack stated: “I understand I breached the contract.
23 I’m willing to cut him a check.”

24 22. As of the date of this filing, Ms. Maack continues to refuse to sell the Business
25 to the Gajeras and allow them the benefit of the Agreement and Lease.

26 23. There is no contingency in the Agreement or Lease that would allow Ms.
27 Maack to cancel the same.
28

27. Despite multiple requests to mediate from the Gajeras' counsel, Ms. Maack did not agree to participate in mediation.

(Breach of Contract/Specific Performance)

34. The Gajeras are entitled to recover their attorneys' fees and costs for bringing this action, pursuant to A.R.S. § 12-341.01.

(Breach of the Covenant of Good Faith and Fair Dealing)

36. Implied in every contract is a covenant of good faith and fair dealing.

